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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

East Bay Sanctuary Covenant; Al Otro Lado;
Innovation Law Lab; and Central American
Resource Center in Los Angeles,

Plaintiffs,

v.

Donald J. Trump, President of the United States, in
his official capacity; William Barr, Attorney
General, in his official capacity; U.S. Department
of Justice; James McHenry, Director of the
Executive Office for Immigration Review, in his
official capacity; the Executive Office for
Immigration Review; Kevin McAleenan, Acting
Secretary of Homeland Security, in his official
capacity; U.S. Department of Homeland Security;
Ken Cuccinelli, Acting Director of the U.S.
Citizenship and Immigration Services, in his
official capacity; U.S. Citizenship and
Immigration Services; John Sanders,
Commissioner of U.S. Customs and Border
Protection, in his official capacity; U.S. Customs
and Border Protection; Matthew Albence, Acting
Director of Immigration and Customs
Enforcement, in his official capacity; Immigration
and Customs Enforcement,

Defendants.

Case No.: 18-cv-06810

**PLAINTIFFS' ADMINISTRATIVE
MOTION TO CONSIDER
WHETHER CASES SHOULD BE
RELATED, PURSUANT TO CIVIL
L.R. 3-12 AND CIVIL L.R. 7-11**

[IMMIGRATION ACTION]

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16 **Pro hac vice application forthcoming*
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1 Plaintiffs in the *East Bay Sanctuary Covenant v. Barr*, Case No. 3:19-cv-04073 (N.D.
 2 Cal.)—respectfully request that this case be related to this earlier filed action, *East Bay Sanctuary*
 3 *Covenant v. Trump*, No. 3:18-cv-06810-JST (N.D. Cal.) pursuant to Civil L.R. 3-12. Counsel for
 4 Defendants opposes this motion.

5 This case is the second time these same four organizational Plaintiffs have come to this Court
 6 to challenge a new government policy barring asylum for certain migrants who travel to the United
 7 States’ southern border. In November of 2018, these four organizational Plaintiffs filed *East Bay v.*
 8 *Trump* to challenge Defendants’ interim final rule eliminating asylum for noncitizens who entered
 9 the southern border between ports of entry. Now, the four organizational Plaintiffs challenge
 10 Defendants’ new interim final rule eliminating asylum for noncitizens who arrive at or enter the
 11 southern border without having first claimed asylum in any third country through which they
 12 traveled en route to the U.S.

13 The two cases are related: they share parties, core legal issues, and facts. The Court in *East*
 14 *Bay v. Trump* has issued two decisions addressing legal issues directly relevant to this action,
 15 including the interpretation of the Immigration and Nationality Act’s asylum statute, at 8 U.S.C. §
 16 1158, the notice and comment requirements of the Administrative Procedure Act (“APA”), and
 17 questions of standing that Defendants are likely to raise again. *See East Bay v. Trump*, 349 F. Supp.
 18 3d 838 (Nov. 19, 2018) (*East Bay I*); *East Bay v. Trump*, 354 F. Supp. 3d 1094 (Dec. 19, 2018) (*East*
 19 *Bay II*).

20 Given the considerable judicial resources expended in *East Bay v. Trump*, and the overlap
 21 between the parties, the legal claims, and their factual underpinnings, relation of the two cases is
 22 warranted.

23 **I. APPLICABLE STANDARD UNDER CIVIL L.R. 3-12**

24 Under Civil Local Rule 3-12, an “action is related to another when: (1) the actions concern
 25 substantially the same parties, property, transaction or event, and (2) it appears likely that there will
 26 be an unduly burdensome duplication of labor and expense or conflicting results if the cases are
 27 conducted before different Judges.” Civil L.R. 3-12(a).

28 Whenever a party knows or believes that an action may be related to an action which is or

1 was pending in the Northern District, said party “must promptly file in the earliest-filed case an
 2 Administrative Motion to Consider Whether Cases Should be Related, pursuant to Civil L.R. 7-
 3 11.” Civil L.R. 3-12(b). That motion must include: “(1) The title and case number of each
 4 apparently related case; (2) A brief statement of the relationship of the actions according to the
 5 criteria set forth in Civil L.R. 3-12(a).” Civil L.R. 3-12(d).

6 **II. THIS CASE IS CLOSELY RELATED TO *EAST BAY v. TRUMP***

7 The two actions share parties, as well as the same causes of action, governing law, and
 8 factual underpinnings. The new case, *East Bay v. Barr*, Case No. 3:19-cv-04073, is an action for
 9 declaratory and injunctive relief brought by four organizations who challenge an interim final rule
 10 denying asylum eligibility to noncitizens who enter or attempt to enter the southern border after
 11 failing to apply for protection while in a third country through which they transited en route to the
 12 United States. Plaintiffs challenge the lawfulness of this policy as violating the Immigration and
 13 Nationality Act’s asylum statute and the APA. *See East Bay v. Barr*, Compl., Causes of Action at
 14 29-31.

15 The earlier filed case, *East Bay v. Trump*, is likewise an action for declaratory and injunctive
 16 relief brought by the same four organizations to challenge an interim final rule issued by the same
 17 Defendants barring from asylum noncitizens who enter the southern border somewhere other than a
 18 designated port of arrival. That case also challenges the lawfulness of the rule as violating the INA’s
 19 asylum state and the APA.

20 The actions involve “substantially the same parties.” Civil L.R. 3-12(a). The organizational
 21 Plaintiffs in the two cases are the same. *Compare East Bay v. Trump* Compl. ¶¶ 7-14 with *East Bay*
 22 *v. Barr* Compl. ¶¶ 13-20. With one exception, the Defendants in both cases are the same. The
 23 single exception is that President Trump is not named in this case. The remaining Defendants are
 24 the same: the Department of Justice, Executive Office of Immigration Review, Department of
 25 Homeland Security, United States Citizenship and Immigration Service, Customs and Border Patrol,
 26 and Immigration and Customs Enforcement, and the corresponding agency heads are defendants in
 27 both cases. *Compare East Bay v. Trump* Compl. ¶¶ 15-27 with *East Bay v. Barr* Compl. ¶¶ 21-32.

28 The central legal question in both cases is similar: whether Defendants’ new limitation on

1 asylum eligibility violates the asylum statute, 8 U.S.C. § 1158. Defendants issued both of their
 2 asylum bans pursuant to the Attorney General’s authority to impose limitations and conditions on
 3 eligibility for asylum that are “consistent with” § 1158, and to establish “conditions or limitations on
 4 the consideration of an application for asylum” consistent with the Immigration and Nationality Act.
 5 *See* 8 U.S.C. §§ 1158(b)(2)(C), (d)(5)(B). In both cases, Plaintiffs claim that the new policies are
 6 not, in fact, “consistent” with § 1158, because Congress has spoken to the availability of asylum for
 7 those individuals, including in the subsection heavily litigated in *East Bay v. Trump*, 8 U.S.C. §
 8 1158(a)(1), which provides that a non-citizen “who is physically present in the United States or who
 9 arrives in the United States (whether or not at a designated port of arrival . . .), irrespective of such
 10 alien’s status, may apply for asylum in accordance with this section.” *Compare East Bay v. Trump*
 11 *Compl.* ¶¶ 101-106 (Claim 1) with *East Bay v. Barr Compl.* ¶¶ 101-106 (Claim 1). The *East Bay v.*
 12 *Trump* Court has already interpreted the asylum statute in two separate opinions, and set forth
 13 guiding principles on when the Attorney General may impose new “conditions” on asylum
 14 eligibility. *See East Bay I*, 349 F. Supp. 3d at 856-859; *East Bay II*, 354 F. Supp. 3d. at 1112-13.

15 Moreover, as in the earlier case of *East Bay v. Trump*, Plaintiffs here also argue that the new
 16 interim final rule illegally bypasses the notice and comment and grace-period requirements of the
 17 APA. *See* 5 U.S.C. §§ 553(b), (c), (d). *Compare East Bay v. Trump Compl.* ¶¶ 107-110 (Claim 2)
 18 with *East Bay v. Barr Compl.* ¶¶ 107-110 (Claim 2). Defendants have invoked the same “good
 19 cause” and “foreign affairs” exceptions from the APA’s procedural requirements as cited in the
 20 earlier case, and in fact, seek to rely on the *same* evidence to justify them. *See* Interim Final Rule
 21 (“IFR”) at 43 (explicitly relying on “similar concerns and . . . similar conclusions” regarding a surge
 22 of migrants as the “November 2018 interim final rule” to show good cause); 45-48 (citing on-going
 23 negotiations with Mexico and Northern Triangle countries). Indeed, the preamble and discussion
 24 accompanying the interim final rule at issue here cites repeatedly to the *East Bay v. Trump* case.
 25 *See, e.g.*, IFR at 42, 44, 47. Resolution of Plaintiffs’ APA claims will thus relate to issues of law and
 26 fact twice considered by the *East Bay v. Trump* Court. *See East Bay I*, 349 F. Supp. 3d at 863; *East*
 27 *Bay II*, 354 F. Supp. 3d at 1115.

28 Defendants will also likely raise the same standing and zone-of-interests defenses that have

1 been addressed in *East Bay v. Trump*. See *East Bay I*, 349 F. Supp. 3d at 852-853 (addressing Article
 2 3 standing of Plaintiff Organizations), 854 (addressing zone of interests test). See similarly *East Bay*
 3 *II*, 354 F. Supp. 3d at 1115-16. These questions present virtually identical issues because, not only
 4 are the plaintiffs the same, but the Plaintiffs assert the same types of injuries. Compare *East Bay v.*
 5 *Trump* Compl. ¶¶ 78-100 with *East Bay v. Barr* Compl. ¶¶ 109-136.

6 In sum, there is substantial overlap between the plaintiffs, the legal claims, and the factual
 7 elements at issue in this case and in *East Bay v. Trump*. The *East Bay* Court issued two thorough
 8 opinions addressing directly relevant issues. In light of the resources committed to understanding
 9 the legal issues and the factual background in *East Bay v. Trump*, and the centrality of those issues in
 10 each case, “there will be an unduly burdensome duplication of labor and expense” should *East Bay*
 11 *v. Barr* not be assigned to Judge Tigar. Civil L.R. 3-12(a).

12 Dated: July 16, 2019

Respectfully submitted,

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Attorneys for Plaintiffs

**Pro hac vice application forthcoming*

***Application for admission forthcoming*

CERTIFICATE OF SERVICE

I hereby certify that on July 16, 2019, I caused a PDF version of the foregoing document to be electronically transmitted to the Clerk of the Court, using the CM/ECF system for filing and emailed courtesy copies to all necessary parties.

Dated: July 16, 2019

/s/ Julie Veroff

Julie Veroff

Attorney for Plaintiffs

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**UNITED STATES DISTRICT COURT
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 Ken Cuccinelli, Acting Director of the U.S.
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 official capacity; U.S. Citizenship and
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 Commissioner of U.S. Customs and Border
 Protection, in his official capacity; U.S. Customs
 and Border Protection; Matthew Albence, Acting
 Director of Immigration and Customs
 Enforcement, in his official capacity; Immigration
 and Customs Enforcement,

Defendants.

Case No.: 18-cv-06810

**DECLARATION OF KATRINA L.
 EILAND IN SUPPORT OF
 PLAINTIFFS' ADMINISTRATIVE
 MOTION TO CONSIDER
 WHETHER CASES SHOULD BE
 RELATED**

[IMMIGRATION ACTION]

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DECLARATION PURSUANT TO CIVIL L.R. 7-11(a)

I, Katrina L. Eiland declare:

1. I am an attorney at law licensed to practice in the state of California. I am a Staff Attorney at the American Civil Liberties Union Immigrants' Rights Project, and counsel for Plaintiffs in *East Bay Sanctuary Covenant v. Barr*, Case No. 3:19-cv-04073 (N.D. Cal.). I make this Declaration from personal knowledge, and if called to testify, I could and would testify competently thereto.

2. Pursuant to Civil Local Rule 7-11, an Administrative Motion must be accompanied by either a stipulation or a declaration that explains why a stipulation could not be obtained.

3. A stipulation regarding this motion could not be obtained because on July 16, 2019, the counsel for Defendants in *East Bay* (Erez R. Reuveni) stated via email that Defendants oppose the motion.

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 16, 2019, at San Francisco, California.

/s/ Katrina L. Eiland
KATRINA L. EILAND

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 Director of Immigration and Customs
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Defendants.

Case No.: 18-cv-06810

**[PROPOSED] ORDER TO GRANT
 PLAINTIFFS' ADMINISTRATIVE
 MOTION TO CONSIDER
 WHETHER CASES SHOULD BE
 RELATED, PURSUANT TO CIVIL
 L.R. 3-12 AND CIVIL L.R. 7-11**

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1 Having considered the Administrative Motion to Consider Whether Cases are Related filed
2 by Plaintiffs in *East Bay Sanctuary Covenant v. Barr*, Case No. 3:19-cv-04073, and the supporting
3 materials filed by Plaintiffs,

4 IT IS HEREBY ORDERED that the following two actions are deemed related in accordance
5 with Civil Local Rule 3-12:

6 (1) *East Bay Sanctuary Covenant v. Trump*, Case No. 3:18-cv-06810-JST

7 (2) *East Bay Sanctuary Covenant v. Barr*, Case No. 3:19-cv-04073.
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9 **IT IS SO ORDERED.**

10 Dated: _____

11 _____
12 UNITED STATES DISTRICT COURT JUDGE
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